

SETTLEMENT AGREEMENT

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This Settlement Agreement is made and entered into effective as of December ___, 1989 by and between Richard J. Curl, Curl Swim Club, Inc. and Curl Swimming Services, Unltd. (hereinafter designated as "Coach") and Kelley Davies, Gerald W. Davies and Pamella Roselyn Davies (hereinafter designated as "Swimmer").

RECITALS

This Settlement Agreement is executed with reference to the facts alleged in the draft Complaint attached hereto as Exhibit A which is incorporated herein by reference and such other facts as may be reasonably related thereto. Coach recognizes the benefits which will enure to it from reaching a settlement in this matter, which settlement may protect it from loss of its existence, and damage to its present good will, reputation and customer relations. Coach and Swimmer now desire to finally and forever settle the disputes and claims they may have against each other.

AGREEMENT

Therefore, in consideration of the mutual promises hereinafter set forth, Coach and Swimmer hereby agree as follows:

1. The statements set forth in the Recitals are material hereto and are incorporated herein by reference.

2. In full and complete settlement and discharge of any and all claims asserted by Swimmer against Coach, Coach agrees to pay Swimmer the total sum of One Hundred Fifty Thousand Dollars (\$150,000.00) which shall be distributed as follows:

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(a) Concurrently with the execution of this Agreement; Coach shall deliver to the attorney for the Swimmer a Cashier's Check in the sum of Fifty Thousand Dollars (\$50,000.00) made payable to Kelley Davies and Catterton, Kemp & Mason;

(b) The balance of One Hundred Thousand (\$100,000.00) will be paid in the amount of \$8,000.00 per year for eleven consecutive years in semi-annual installments of Four Thousand Dollars (\$4,000.00) on March 1st and September 1st with the first installment being due March 1st, 1990.

(c) Coach will make two additional lump sum payments on or before the following dates:

1. Ten Thousand Dollars (\$10,000.00) on or before December 31, 1995.
2. Two Thousand Dollars (\$2,000.00) on or before December 31, 1996.

(d) It is the intention of the parties that the payments made herein are to compensate the Swimmer for compensatory damages for the pain and suffering experienced by her and are not meant to be taxable.

3. This Agreement to make these payments will be secured by a Promissory Note executed by Coach. The sums due under this Agreement and note shall be without interest and the parties agree that the Coach may defer execution of the note until settlement on the house which he is in the process of purchasing. However, in no event will execution of the note be deferred beyond March 31, 1990.

4. As additional security for the unpaid balance of payments due under this Agreement, Coach agrees to designate Kelley Davies as a beneficiary of an existing life insurance

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policy. The parties agree that in the event of Coach's untimely death, any payments from the life insurance policy will be held in trust by counsel for the parties and distributed to Kelley Davies consistent with the payment provisions of this Agreement.

5. Swimmer reserves the right to review the Coach's tax return in January of 1997. In the event that Coach's earnings have increased, then the annual payment of Eight Thousand Dollars (\$8,000.00) would increase proportionately. Earnings is defined to be Coach's adjusted gross earnings as reflected in his federal tax returns. Any resulting increase in the annual payment will continue in the following years until the entire payment of One Hundred Thousand Dollars (\$100,000.00) is made. In no event will there be a decrease in the payments even if the Coach's annual earnings decrease.

6. Any default in any payment when due will render the balance of all payments immediately due and payable. Any payment more than five days overdue will be considered a default and notwithstanding any law to the contrary, it is the intention that the payment due by the terms of this Agreement and the note to be executed shall not be dischargeable in bankruptcy.

7. Concurrently with the execution of this Settlement Agreement, Swimmer shall not initiate or proceed with any other action or proceeding, whether civil or administrative as against

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Coach. Additionally, Swimmer will not initiate and/or voluntarily proceed with any criminal action against Coach.

8. Except with regard to the promises, agreements, warranties, and indemnities created by or arising out of this Settlement Agreement, Coach and Swimmer fully and irrevocably release and discharge each other as follows:

(a) Swimmer hereby forever releases and discharges Coach, each of the officers, directors, shareholders, heirs, executors, administrators, attorneys, agents, employees, partners, principals, affiliates, representatives, successors and assigns (all of whom are hereinafter collectively referred to as "the Coach Releasees"), of and from all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs, expenses (including attorneys' fees), liens, actions and causes of action, of every kind, whether now known or unknown, suspected or unsuspected, which Swimmer now has, or at any time heretofore had, or may hereafter have, against any of the Coach Releasees, based upon or related to any matter, cause, fact, act or omission or occurring on or before the date hereof or relating to or by reason of any lien, liability, matter, cause, fact, act or omission or occurring on or before the date hereof or relating to or by reason of any lien, liability, matter, cause, fact, thing, act or omission whatever, occurring on or before the date hereof, including without limitation those giving rise to the injuries (all of which are hereinafter referred to as the "Released Matters").

(b) Coach hereby forever releases and discharges Swimmer and each of the officers, directors, shareholders, heirs, executors, administrators, attorneys, agents, employees, partners, principals, affiliates, representatives, successors and assigns of Swimmer (all of whom are hereinafter collectively referred to as the "Swimmer Releasees"), of and from all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs, expenses (including attorneys' fees), liens, actions and causes of action of every kind, whether now known or unknown, suspected or unsuspected, which Coach

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now has, or at any time heretofore had, or may hereafter have, against any of the Swimmer Releasees, based upon or related to any matter, cause, fact, act or omission occurring on or before the date hereof or relating to or by reason of any lien, liability, matter, cause, fact, act or omission whatever, occurring on or before the date hereof including without limitation those giving rise to the Injuries (all of which are hereinafter referred to as the "Released Matters").

9. Swimmer hereby releases and discharges Coach from any and all actions, causes of action, claims, costs and expenses which may arise while counsel for the parties act as co-trustee and signatory for the funds being held pursuant to the terms and provisions of this Agreement. Said trustees shall not participate in any manner in the management or administration or investment of said funds and neither counsel shall bear any risk of loss, which risk shall be borne solely by Swimmer, who together with her attorneys shall have the sole and exclusive right to direct investments thereof.

10. Coach and Swimmer, including their respective heirs, executors, administrators, attorneys, agents, employees, partners, principals, affiliates, representatives, successors, and assigns, and each of them, hereby agree to keep confidential this Settlement Agreement and all facts, including the acts and conduct of Coach and Swimmer, regarding or relating to the Injuries (hereinafter designated as "the Confidential Information") and at all times hereafter and in good faith to

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maintain such confidentiality. In the event Swimmer fails to maintain the confidentiality of the Confidential Information or in any way directly or indirectly discloses the same or causes the same to be disclosed to any person, firm, corporation or other entity, Coach shall be released and discharged from making any further payments as provided herein. In the event of an alleged breach of the confidentiality provision, the parties will submit the matter to binding arbitration. The burden of proof will be on the moving party. Coach will not assert any breach of this confidentiality agreement unless he is current on his payments. Further, in the event that any payment comes due during the course of arbitration, that payment will be paid into an interest bearing escrow account. The losing party will pay the costs of the arbitration proceedings. This Agreement will not preclude the parties ability to discuss this incident with their therapists. Further, the Agreement only applies to disclosures occurring subsequent to October 1, 1989. Any disclosures that occurred prior to that date do not constitute a violation of the Agreement. The Swimmer agrees to provide their attorneys with a list of those persons to whom they have previously made disclosures. The Swimmer may supplement the list to the extent that they subsequently becomes aware of additional persons to whom they made disclosures prior to October 1, 1989.

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The list is intended solely for use by their attorneys. Nothing contained herein shall prevent either party from asserting any claim or suit for independent damages resulting from a breach of this confidentiality provision. In the event any claim or suit is filed, the parties agree that the filing of any claim or suit shall be under seal and shall remain under seal until a reviewing court in which the claim or suit is filed has ruled that publication of the claim or suit would not breach this provision.

11. Swimmer warrants that she has not heretofore assigned or transferred, or purported to assign or transfer, to any other person any of her right, title or interest in or to any Released Matters, or any portion thereof. Coach understands and acknowledges that Swimmer's acceptance of this Settlement Agreement was induced, in part, by Coach's representations through his attorneys to Swimmer's attorneys of his present financial condition. Accordingly, Coach warrants that the information provided to Swimmer's attorneys regarding his financial condition, specifically a financial statement dated June 21, 1989, signed by Coach, his 1987 tax return, and a draft of his 1988 tax return, were true, complete and accurate at the time they were prepared. Each party further agrees to indemnify and hold the other party harmless from and against any and all

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claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs, expenses (including attorneys' fees), liens, actions and causes of action based upon or arising in connection with the breach by either party of any of the warranties set forth in this paragraph. In connection with the Agreement, each of the parties hereto acknowledges that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Settlement Agreement or any party hereto; but each of the parties hereto further acknowledges that it is their intention hereby fully, finally and forever to settle and release all of the Released Matters, whether known or unknown, suspected or unsuspected, which now exist, may exist or heretofore have existed, between Coach, on the one part, and Swimmer on the other part. In furtherance of this intention, the releases herein shall be and remain in effect as full and complete general mutual releases, notwithstanding the discovery or existence of any such additional or different claims or facts.

12. The agreements and releases contained in this Settlement Agreement effect the settlement of claims which are denied and contested, and nothing herein set forth shall be

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construed as an admission by either Coach or Swimmer of any liability of any kind to the other, or to any other person.

13. This Settlement Agreement is binding upon all directors, officers, shareholders, heirs, executors, administrators, successors, assigns, attorneys, representatives, agents, employees, partners, principals, and affiliates of Coach and Swimmer.

14. This Settlement Agreement sets forth the entire agreement between Coach and Swimmer with respect to the subject matter hereof, and supersedes any and all prior representations, negotiations, and agreements relating thereto. Each of the parties hereto acknowledges that no other party, or any agent or attorney of any other party, has made any promise, representation or warranty whatsoever, express or implied, written or oral not contained herein, concerning the subject matter hereof to induce the parties to execute this Settlement Agreement, and each of the parties acknowledges that they have not executed this Settlement Agreement in reliance on any promise, representation or warranty not contained herein. This Settlement Agreement may not be altered, amended or modified except by an instrument in writing signing by all the signatories hereto.

15. Coach and Swimmer each agrees to execute any documents and to do and perform any acts and things necessary or proper to

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further effectuate or evidence the terms and provisions of this Settlement Agreement.

16. No breach of any provision hereof can be waived unless such waiver is in writing. Waiver by one party of performance of any provision hereof shall not invalidate this Settlement Agreement, nor shall it be deemed to be a waiver by such party of any other provision hereof.

17. In the event of litigation and/or arbitration in connection with or concerning the subject matter of this Settlement Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred by him or them in connection therewith, including without limitation reasonable attorneys' fees.

18. Each party hereto represents and warrants that they are executing and delivering this Settlement Agreement after having received full legal advice as to their rights hereunder and the legal effect hereof from legal counsel of their own choosing.

19. This Settlement Agreement shall be governed by the laws of the State of Maryland.

20. Each party is to bear his own costs and attorneys' fees incurred in connection with the matters leading up to the execution of this Agreement.

21. As used in this Settlement Agreement, "persons" and "it" refer to and include natural persons, corporations,

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partnerships, joint ventures, and any other entity. Wherever in this Settlement Agreement the context so requires, "and" shall include "or" and vice-versa.

22. If any provision of this Settlement Agreement is held to be void and unenforceable, all other provisions shall nevertheless continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as of the date and year first written above.

COACH:

Richard J. Curl (Seal)
RICHARD J. CURL

SWIMMER:

Kelley M. Davies (Seal)
KELLEY DAVIES

Gerald W. Davies (Seal)
GERALD W. DAVIES

Pamela Roselyn Davies (Seal)
PAMELA ROSELYN DAVIES

APPROVED AS TO FORM:

SHAFFER & DAVIS, CHARTERED

BY: Peter I. J. Davis
Peter I. J. Davis
100 Park Avenue
Rockville, Maryland 20850
(301) 434-4300

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CATTERTON, KEMP & MASON

BY: Michael Mason (He)
Michael D. Mason
200A Monroe Street
Suite 315
Rockville, Maryland 20850
(301) 294-0460

EXHIBIT A

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

KELLEY MURRAY DAVIES
321 Westlawn Drive
Ashton, Maryland 20861

:

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:

Plaintiff

:

vs.

:

Civil No. _____

RICHARD J. CURL
15001 Braemar Crescent Way
Darnestown, Maryland 20878

:

:

Defendant

:

COMPLAINT

Comes now the Plaintiff, Kelley Murray Davies, by and through her attorneys, Catterton, Kemp & Mason and Judith R. Catterton, Esquire, and sues the Defendant, Richard J. Curl, and for cause states as follows:

1. That the Plaintiff, Kelley Murray Davies, whose date of birth is June 1, 1969, is now an adult citizen of the United States and a resident of Montgomery County, Maryland.

2. That the Defendant, Richard J. Curl, is an adult citizen of the United States and a resident of Montgomery County, Maryland.

COUNT I

(Intentional Infliction of Emotional Distress)

3. During the period 1982 through and including 1986, the Defendant, operating as the Curl Swim Club, contracted to provide professional instruction and coaching to young persons

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who were interested in swimming. As part of his services, the Defendant arranged for select members of his swimming program to compete in various swimming meets held throughout the country. The Defendant arranged transportation and lodging for his charges and accompanied them to these meets.

4. In December of 1982, at which time the Plaintiff was thirteen (13), her parents enrolled her in one of the Defendant's swimming programs.

5. During the years 1982 through 1986, the Defendant, in his position of a paid professional swimming coach, was frequently entrusted with the temporary care, custody and responsibility for the supervision of the Plaintiff who was at all relevant times a minor child.

6. Beginning as early as March of 1983, at which time the Plaintiff was only thirteen (13) years old, and continuing until approximately September, 1986, the Defendant knowingly and intentionally abused his position of trust by sexually molesting and exploiting the Plaintiff on repeated occasions.

7. As a direct and proximate result of this exploitation and molestation, the Plaintiff suffered, and continues to suffer, severe emotional distress. As a result, she was hospitalized for an extended period of time. Upon her discharge from the hospital, she was placed in a program of therapy and treatment on an out-patient basis. To date, she continues in therapy. The injuries which the Plaintiff has suffered are permanent in nature. Therefore, the Plaintiff will, in the future, incur medical expenses in addition to those

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she has incurred to date. As a result of her injuries, the Plaintiff was forced to withdraw from college and lost her scholarship. Further, as a direct result of the Defendant's conduct, the Plaintiff was, and continues to be, subjected to suffering fright, nervousness, indignity, humiliation, embarrassment and insult.

WHEREFORE, the premises considered, the Plaintiff, Kelley Murray Davies, demands judgment against the Defendant, Richard J. Curl, in the amount of One Million Dollars (\$1,000,000.00) for compensatory damages and the amount of One Million Dollars (\$1,000,000.00) for punitive damages.

COUNT II
(Battery)

8. The Plaintiff incorporates herein and adopts by reference the foregoing paragraphs 1 through 7.

9. On or about February, 1984, while in the Plaintiff's home, the Defendant did exploit and sexually molest the Plaintiff, who at the time was fourteen (14) years of age, by committing a sexual act, cunnilingus, upon her, at which time, the Defendant was four (4) or more years older than the Plaintiff.

10. As a direct and proximate result of this exploitation and molestation, the Plaintiff suffered, and continues to suffer, severe emotional distress. As a result, she was hospitalized for an extended period. Upon her discharge from the hospital, she was placed in a program of therapy and

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treatment on an out-patient basis. To date, she continues in that program. The injuries which the Plaintiff has suffered are permanent in nature. Therefore, the Plaintiff will, in the future, incur medical expenses in addition to those she has incurred to date. As a result of her injuries, the Plaintiff was forced to withdraw from college and lost her scholarship. Further, as a direct result of the Defendant's conduct, the Plaintiff was, and continues to be, subjected to suffering fright, nervousness, indignity, humiliation, embarrassment and insult.

WHEREFORE, the premises considered, the Plaintiff, Kelley Murray Davies, demands judgment against the Defendant, Richard J. Curl, in the amount of One Million Dollars (\$1,000,000.00) for compensatory damages and the amount of One Million Dollars (\$1,000,000.00) for punitive damages.

COUNT III
(Battery)

11. The Plaintiff incorporates herein and adopts by reference the foregoing paragraphs 1 through 10.

12. On or about April of 1984, the Defendant, who was four (4) or more years older than the Plaintiff at the time, did exploit and sexually molest the Plaintiff, who was fourteen (14) years old at the time, by committing a sexual act, cunnilingus, upon her.

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13. As a direct and proximate result of this exploitation and molestation, the Plaintiff suffered, and continues to suffer, severe emotional distress. As a result, she was hospitalized for an extended period. Upon her discharge from the hospital, she was placed in a program of therapy and treatment on an out-patient basis. To date, she continues in that program. The injuries which the Plaintiff has suffered are permanent in nature. Therefore, the Plaintiff will, in the future, incur medical expenses in addition to those she has incurred to date. As a result of her injuries, the Plaintiff was forced to withdraw from college and lost her scholarship. Further, as a direct result of the Defendant's conduct, the Plaintiff was, and continues to be, subjected to suffering fright, nervousness, indignity, humiliation, embarrassment and insult.

WHEREFORE, the premises considered, the Plaintiff, Kelley Murray Davies, demands judgment against the Defendant, Richard J. Curl, in the amount of One Million Dollars (\$1,000,000.00) for compensatory damages and the amount of One Million Dollars (\$1,000,000.00) for punitive damages.

COUNT IV
(Battery)

14. The Plaintiff incorporates herein and adopts by reference the foregoing paragraphs 1 through 13.

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15. On or about April 19, 1986, the Defendant, while having the temporary care, custody and responsibility for the supervision of the Plaintiff, who was then sixteen (16) years of age, did sexually molest and exploit the Plaintiff by engaging her in intercourse and certain other sexual acts.

16. As a direct and proximate result of this exploitation and molestation, the Plaintiff suffered, and continues to suffer, severe emotional distress. As a result, she was hospitalized for an extended period. Upon her discharge from the hospital, she was placed in a program of therapy and treatment on an out-patient basis. To date, she continues in that program. The injuries which the Plaintiff has suffered are permanent in nature. Therefore, the Plaintiff will, in the future, incur medical expenses in addition to those she has incurred to date. As a result of her injuries, the Plaintiff was forced to withdraw from college and lost her scholarship. Further, as a direct result of the Defendant's conduct, the Plaintiff was, and continues to be, subjected to suffering fright, nervousness, indignity, humiliation, embarrassment and insult.

WHEREFORE, the premises considered, the Plaintiff, Kelley Murray Davies, demands judgment against the Defendant, Richard J. Curl, in the amount of One Million Dollars (\$1,000,000.00) for compensatory damages and the amount of One Million Dollars (\$1,000,000.00) for punitive damages.

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COUNT V
(Battery)

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17. The Plaintiff incorporates herein and adopts by reference the foregoing paragraphs 1 through 16.

18. On or about August of 1986, the Defendant entered the Plaintiff in a swimming meet in Mission Viejo, California and made the necessary arrangements for travel and lodging. The Defendant accompanied the Plaintiff to the swim meet, during which time, he had the temporary care, custody and responsibility for the supervision of the Plaintiff, who was then a minor child.

19. On the occasion of this meet, while in California, the Defendant did sexually exploit and molest the Plaintiff by engaging her in an act of intercourse and other sexual acts.

20. As a direct and proximate result of this exploitation and molestation, the Plaintiff suffered, and continues to suffer, severe emotional distress. As a result, she was hospitalized for an extended period. Upon her discharge from the hospital, she was placed in a program of therapy and treatment on an out-patient basis. To date, she continues in that program. The injuries which the Plaintiff has suffered are permanent in nature. Therefore, the Plaintiff will, in the future, incur medical expenses in addition to those she has incurred to date. As a result of her injuries, the Plaintiff was forced to withdraw from college and lost her scholarship. Further, as a direct result of the Defendant's conduct, the Plaintiff was, and continues to be, subjected to suffering

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fright, nervousness, indignity, humiliation, embarrassment and insult.

WHEREFORE, the premises considered, the Plaintiff, Kelley Murray Davies, demands judgment against the Defendant, Richard J. Curl, in the amount of One Million Dollars (\$1,000,000.00) for compensatory damages and the amount of One Million Dollars (\$1,000,000.00) for punitive damages.

Respectfully submitted,

JUDITH R. CATTERTON, ESQUIRE
Attorney for Plaintiff
CATTERTON, KEMP & MASON
200 A Monroe Street, Suite #315
Rockville, Maryland 20850
(301) 294-0460

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of October, 1989, a copy of the foregoing Complaint was mailed, postage prepaid to Peter I. J. Davis, Esquire, Shaffer and Davis, Chartered, 100 Park Avenue, Rockville, Maryland 20850.

JUDITH R. CATTERTON, ESQUIRE
Attorney for Plaintiff

(6295P-pas)
10/20/89

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